IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPEL**ATE JURISDICTION**

WRIT PETITION NO. 635 OF 2005

M/s Auto Mughals Pvt. Ltd. .... Petitioner.

Verus.

Smt. BaniRadhu Karmarkar & Ors. .. Respondents.

Mr.S.V.Sadavarte for petitioner.

Mr.S.C. Tamhane for respondent no.1.

CORAM: SMT.N.N.MHATRE,J.

DATE : 12TH SEPTEMBER 2005.

P.C.

1. The petitioner challenges the order of appellate court which has decreed the suit on the ground of non user of the suit premises without reasonable cause for six months prior to the institution of the suit. The appellate court has decreed the suit under section 13(1)(K) of Bombay Rent Act.

2. The appellate court found and in my view rightly that the suit premises were not in use for 6 months prior to institution of the suit. The electricity bills which are produced, indicate that there was zero consumption for all the 6 months prior to the institution of the suit except in July 1989 when there was consumption of 10

units. This, in my opinion, would demonstrate that the suit premises were not in use without reasonable cause.

3. The judgements relied on by the learned advocate for the petitioner in case of **Achut Pandurang Kulkarni versus Sadashiv Ganesh Phulambrikar, AIR 1973 Bombay 210** and in case of **Smt. D. Malini wd/o M. Gopal and others versus Samirmal Amolakchand Kucheria & Ors.,222 Bom.R.C.1987** did not take the case of the petitioner any further. There is a finding of fact recorded by the appellate court that the suit premises were not in use during these six months prior to institution of the suit. Since the electricity bills reflected this position, there is no need to interfere with the order of appellate court.

4. Petition is rejected. Learned advocate for the petitioner seeks stay of this order. The order is stayed for 4 weeks only in view of the fact that respondent no. 1 is an 80 years old lady.

(SMT.N.N.MHATRE,J)